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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,635	12/31/2001	Ronald L. Edens	17,698	5833

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KIMBERLY-CLARK WORLDWIDE, INC.
401 NORTH LAKE STREET
NEENAH, WI 54956

EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 09/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,635

Applicant(s)

EDENS ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5-9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claims 7, 16, 24 and 32 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The 4-30-02 drawings have been placed in the file but approval thereof is held in abeyance, i.e. see drawing objections in the previous paragraph.

Description

3. The abstract of the disclosure is objected to because the abstract is too short, i.e. the length should be between 50 and 150 words in length. Correction is required. See MPEP § 608.01(b).

4. The disclosure is objected to because of the following informalities: on page 1, line 2, "claims priority from" should be --claims the benefit of--. On page 2, lines 11 and 13, reference to the inventors should be avoided. The description should be limited to a factual description of the invention. On page 12, line 12, after "z-axis", --Z-Z-- should be inserted.

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Appropriate correction is required.

5. The use of the trademark KOTEX(R)(page 8, line 32 and page 9, lines 15 and 32) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Trademarks should be shown either in all capital letters or with a trademark symbol but not both.

Claim Objections

6. Claims 1-33 are objected to because of the following informalities: in claims 1, 11, 18 and 26, line 2, “the vestibule” should be --a vestibule--. Appropriate correction is required.

Claim Language Interpretation

7. It is noted that while “labial pad” is defined on page 4, lines 18-20 that the claims are drawn to an “absorbent article”. “Vestibule” is defined as set forth on page 4, lines 20-25 and the sentence bridging pages 4-5. “Disposition...vestibule” is defined as set forth on page 4, lines 27-29, and page 5, lines 6-11 and 22-24. The various directional terms used in the claims are defined as set forth on page 5, lines 12-19. “Generally circular geometry” and “generally circular periphery” are defined as set forth on page 5, lines 27-32. “Notch” is defined as set forth on page 13, lines 15-16 and page 15, lines 5-6.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Pollard et al '212.

The Pollard device includes an absorbent article 20 comprising an absorbent, see col. 4, lines 23-25, which absorbent has a circular geometry and periphery, see Figures, and at least one “notch”, see definitions set forth supra and element or indentation G, i.e. a “notch”, which extends inwardly from the periphery. With regard to the functions, properties and capabilities set forth in claim 1, i.e. “being configured... vestibule”, and claims 3 and 5, see definitions above and note that the Pollard et al device includes the claimed structure. Therefore, there is sufficient factual basis for one to conclude that the functions, properties and capabilities of such claimed structure would also be inherent in the same structure of Pollard et al. See MPEP 2112.01. In any case, Applicant discloses the radius of the claimed invention is 15 to 50 mm, the thickness is 0.5 to 10 mm and the notch having a width and a depth no greater than 30 mm. The Pollard et al disclosure at, e.g., col. 5, lines 60-66 disclose a diameter or twice the radius and a height commensurate to those disclosed by Applicant. Also see the depth of G, i.e. element w and col. 10, lines 9-15, and the width of G, i.e. in Figure 3F the width goes down to zero at the center, i.e. a width and a depth of the notch are no greater than 30 mm. Therefore, with regard to claims 1 and 3-5, again there is sufficient factual evidence to conclude that the properties, functions and

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capabilities of such dimensions would also be inherent in the same dimensions of Pollard et al.

See MPEP 2112.01. It is noted with regard to claim 4, the claim does not require all the widths or the largest width being no greater than 30 mm.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 1-6, 8-15, 17-23, 25-31 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Procter & Gamble, hereinafter called PG, '078 in view of PG '609.

The PG '078 reference teaches an absorbent article comprising an absorbent 20, having at least one notch, see Figure 1, in its periphery, and superabsorbent, see page 12, lines 17-18, a fluid permeable cover and a liquid impermeable baffle, see page 14, lines 2-4. The absorbent article is configured for disposition within the vestibule, see definition supra and PG '078, i.e.

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definition of "interlabial absorbent structure" bridging pages 4-5 and the sentence bridging pages 5-6. Therefore the PG '078 device includes all the structure and the functions, capabilities and properties set forth in claims 1-2, 6, 8-12, 17-19, 23, 25-27, 31 and 33 except for a substantially circular geometry and periphery. However, see page 7, lines 3-5 of PG '078. Then see PG '609 at page 16, lines 13-19, i.e. semicircular panels are exchangeable for rectangular panels, i.e. a circular geometry and periphery is exchangeable for a rectangular geometry and periphery. To make the rectangular panels of PG '078 semicircular instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by PG '609. With regard to claims 3-5, 13-15, 20-22 and 28-30, a depth and a width of the notch is no greater than 300mm and the dimensions are sufficient to allow the spacing from the perineum and clitoris, see '078 at portions cited immediately previous as well as Figure 1, last paragraph of page 11, first full paragraph on page 12 and page 16, second full paragraph, i.e. the PG device includes the same dimensions as those disclosed by Applicants.

12. Claims 7 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over PG '078 and '609 as applied to claims 6 and 31 above, and further in view of PG '075.

Applicants claim the cover encloses the absorbent while PG '078 teaches a topsheet and backsheet on opposite sides of the absorbent. See page 14, first full paragraph and page 16, lines 1-2. However, PG '075 at page 15, fourth full paragraph teaches the interchangeability of such a configuration in which there is a topsheet on the body facing surface and a backsheet on the opposite surface and a configuration in which the topsheet at least partially wraps the labial device absorbent, i.e. can enclose the absorbent. Therefore, to make the topsheet and backsheet on opposite sides of the absorbent of PG '078 a topsheet which encloses the absorbent instead

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would be obvious to one of ordinary skill in art in view of the interchangeability as taught by PG '075.

13. Claims 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over PG '078 and '609 as applied to claims 11 and 24 above, and further in view of Vukos et al '429.

Applicants claim the cover encloses the absorbent and a backsheet, i.e. claims 16 and 24, while PG '078 teaches a topsheet and backsheet on opposite sides of the absorbent. See page 14, first full paragraph and page 16, lines 1-2. Such '078 configuration provides a liquid pervious surface on one side of the absorbent and a liquid impervious surface on the opposite side of the absorbent. The Vukos et al reference is cited to show an interlabial pad which includes a topsheet which encloses the labial device absorbent as well as a backsheet. This configuration also provides a liquid pervious surface on one side of the absorbent and a liquid impervious surface on the opposite side of the absorbent. To make the topsheet and backsheet on opposites sides of the absorbent of PG '078 a topsheet which encloses the labial device absorbent and a backsheet as taught by Vukos et al would be obvious, see *In re Siebentritt* (two equivalents are interchangeable for their desired function, express suggestion of desirability of substitutions not need to render such substitution obvious).

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 1-33 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of copending Application No. 10/036,990(2002/0193769A1) in view of PG '609. Although the conflicting claims are not identical, they are not patentably distinct from each other because since the instant application and the other application were filed on the same day, the one way In re Vogel test applies, i.e. are the claims of the instant application obvious in view of the claims of the other application? The answer is yes. The claims of the '990 application include all the structure claimed in the instant application except for a circular geometry and periphery. The '990 application claims axes and a periphery with longitudinal sides and transverse end areas. See PG '609 at page 16, lines 13-19, i.e. a circular geometry and periphery is exchangeable for a axes and a geometry and periphery defined by longitudinal sides and transverse end areas, e.g. a rectangle, a trapezoid. To make the axes and longitudinal sides and transverse end areas of '990 a circular geometry and periphery instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by PG '609.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.


Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Whitehead et al and DeRossett et al references show the interchangeability in absorbent articles of various layer configurations which include topsheets on one side or wrapping the absorbent.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR